

**IDAHO FALLS, THURSDAY, SEPTEMBER 11, 2008 AT 8:50 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**ROBERT JOHANNSSEN,**

**Plaintiff-Respondent-Cross Appellant,**

**v.**

**ROBERT W. UTTERBECK; BROOKSIDE,  
LLC, an Idaho limited liability company,**

**Defendants-Appellants-Cross  
Respondent.**

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**Docket No. 34023**

Appeal from the Seventh Judicial District of the State of Idaho, Bonneville County.  
Hon. Richard T. St. Clair, District Judge.

Cox, Ohman & Brandstetter, Chtd., Idaho Falls, for appellant.

Beard, St. Clair, Gaffney, McNamara, Calder, PA, Idaho Falls, for respondent.

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This action arises from the dissolution of Brookside, LLC (“LLC”), an Idaho Limited Liability Company formed by Robert Utterbeck (“Utterbeck”) and Robert Johannsen (“Johannsen”) to develop a subdivision. The parties are in conflict about how to interpret the LLC Operating Agreement, specifically as to whether it required Johannsen to contribute the entire 57 acres of property that Johannsen and Utterbeck originally contemplated for the subdivision. Johannsen filed suit against Utterbeck and the LLC for breach of contract, an accounting, and dissolution. Utterbeck counterclaimed for breach of contract, an accounting, and dissolution. The trial judge denied Johannsen’s motion for summary judgment because he found that the Operating Agreement was ambiguous, thus presenting a question of fact. Before trial commenced, Johannsen dropped his breach of contract claim, resulting in the trial judge referring to Utterbeck as plaintiff and Johannsen as defendant throughout the trial. The jury found that Johannsen did not breach the contract. During and after trial, Utterbeck raised several motions that the trial judge denied. The trial judge found that Johannsen was the prevailing party and awarded him \$10,000.00 in attorney fees and \$800.00 in costs. The trial judge then judicially dissolved the LLC and facilitated the winding up process. Utterbeck appeals the following issues: 1) the summary judgment order; 2) denial of his motion for a mistrial; 3) denial of his motion for J.N.O.V. or a new trial; 4) opposing counsel’s comments to the jury; 5) the dissolution order; and 6) attorney fees. Johannsen cross-appeals on the ground that he was awarded inadequate attorney fees.

**IDAHO FALLS, THURSDAY, SEPTEMBER 11, 2008 AT 10:00 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**NADENE R. CARTER, NORMA R.** )  
**BENNETT, LAREE LARSON, MELVIN S.** )  
**ROBERTS. Beneficiaries of the Norman** )  
**Roberts Family Revocable Trust,** )

**Plaintiffs-Appellants,** )

**v.** )

**FLORA and DONOVAN ZOLLINGER,** )

**Defendants-Respondents.** )

**Docket No. 34377**

Appeal from the District Court of the Sixth Judicial District of the State of Idaho,  
Franklin County. Hon. Don L. Harding, District Judge; Hon. Mark A. Beebe,  
Magistrate.

Daines & Wyatt, LLP, Ephraim, for appellant.

Thomsen Stephens Law Offices, PLLC, Idaho Falls, for respondent.

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Appellants Nadene Carter, Norma Bennett, LaRee Larson, and Melvin Roberts (collectively the Appellants) appeal from the district court's decision to uphold the magistrate court's dismissal of their unlawful detainer action against Respondents Flora and Donovan Zollinger. The Appellants, Flora Zollinger, and Ellis Roberts, who is not a party to this case, are the children of Norman and Afton Roberts and are the beneficiaries of the Norman H. Roberts Family Revocable Trust. The trust corpus contains a piece of real property located in Preston, Idaho (the Preston property). The Zollingers reside on this property.

The Appellants filed this unlawful detainer action pursuant to I.C. § 6-303 to evict the Zollingers from the Preston property. The magistrate court dismissed the action because it found the Appellants failed to show that the Zollingers were tenants of the Trust. The Appellants brought an appeal to the district court; the district court affirmed the magistrate court's decision. On appeal to this court, the Appellants argue dismissal of their action was improper because the Trust owns record title to the Preston property and the Zollingers are, in fact and in law, tenants of the Trust.

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

On December 8, 2004, developer Clear Creek, LLC (Clear Creek) filed a conditional use permit application with Blaine County seeking to develop a CH-PUD on three parcels of property totaling 23.37 acres. Clear Creek’s proposed CH-PUD, named “Quail Creek,” contains 126 units—87 “market rate” units and 39 community housing units. Public hearings on Quail Creek were held before the Blaine County Planning and Zoning Commission. The Blaine County Board of County Commissioners held subsequent hearings on the development, and approved the final plat on April 12, 2006.

Johnson owns property adjoining the proposed CH-PUD. He filed a petition for judicial review on May 8, 2006, appealing the Board's approval of the final plat. After briefing and oral argument, the district court denied Johnson's petition.

Johnson argues on appeal to the Idaho Supreme Court that the district court erred. He raises several arguments on appeal: (1) that the involvement of the Blaine Ketchum Housing Authority (BKHA) with the project violated BKHA's statutory authority; (2) that Quail Creek was conditionally approved in violation of the Local Land Use Planning Act; (3) that Quail Creek was approved in violation of Blaine County's ordinances; and (4) that Johnson is substantially injured by the approval of the final plat. Blaine County and Clear Creek reject Johnson's arguments, and argue that Johnson's substantial rights have not been prejudiced by the majority of his complaints.